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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 306
Consolidated With No. 307

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY,

Appellant,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN.

REPLY BRIEF FOR APPELLANT

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

INDEX.

PAGE

I. Statements by Appellees 1

II. Common Management or Control 4

III. Through Routes 15

IV. Conclusion 18

Index of Citations.

Cases.

Absorption of Switching Charges, 157 I. C. C. 129 .... 8, 9

Chicago, M. & St. P. Ry. v. Minn. Civic Assn., 247 U. S. 490 14

Class Rates, Mountain Pacific Territory, 296 I. C. C. 555 13

Denver & R. G. W. R. Co. v. Union P. R. Co., 351 U. S. 321 ..... 5, 6, 15

Helix Milling Co. v. Great Northern Ry. Co., 287 I. C. C. 77 12

Hughes Creek Coal Co. v. K. & M. Ry. Co., 29 I. C. C. 671 8

Louisville & Nash. R. R. v. United States, 242 U. S. 60 14

Malleable Iron Range Co. v. Chicago, M. St. P. & P. R. Co., 253 I. C. C. 431 ..... 13, 14

Manufacturers Ry. Co. v. Ahnapee & W. Ry. Co., 172 I. C. C. 554 ..... 8, 9, 10

Portland Chamber of Commerce v. O. R. R. & N. Co., 19 I. C. C. 265 11

Securities Comm'n v. Chenery Corp., 318 U. S. 80 3

Thompson v. United States, 343 U. S. 549 ..... 6, 15
United States v. Lake Shore & M. S. Ry. Co., 203 Fed. 295 8
United States v. Missouri Pacific R. Co., 278 U. S. 269 6
United States v. St. Louis Terminal, 224 U. S. 383; 236 U. S. 194 9
Virginian Railroad Co. v. United States, 272 U. S. 658 17
West Coast Lumber Mfrs. Asso. v. S. P. & S. Ry. Co., 45 I. C. C. 230 10
West Coast Lumbermen's Asso. v. C. M. St. P. Ry. Co., 129 I. C. C. 363 11
Wyoming Coal Company v. Virginian Ry. Co., 98 I. C. C. 488 17

Statutes.

Interstate Commerce Act (Title 49 U. S. C.):
Section 1(3)(b) 7, 12, 15
Section 3(1) 18
Section 5(2) 5
Section 15 5
Section 15(1) 12
Section 15(3) 6
Section 15(4) ..... Passim
Section 15(8) 16

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN.

REPLY BRIEF FOR APPELLANT.

Chicago, Milwaukee, St. Paul and Pacific Railroad Company (appellant) submits herewith its brief in reply to the briefs of appellee railroads and the United States and Interstate Commerce Commission.

I. STATEMENTS BY APPELLEES.

Appellee railroads attempt to preserve the illusion, successfully created before the Commission, that it has cost the Great Northern Railway Company and the Northern Pacific Railway Company (Northern Lines) approximately

$218,000,000 to keep the S. P. & S. System[1] in operation since 1910 (Br. 4). This "cost", as revealed in the Northern Lines' briefs before the Commission and the District Court consists of (1) a hypothetical annual dividend of 4% on $40,000,000 par value capital stock of the S. P. & S. owned by the Northern Lines, which over a period of 45 years would total $72,000,000; and (2) the present investment of the S. P. & S. System in road equipment, miscellaneous physical property, and investments in affiliated companies, totaling $146,233,817.

Instead of drawing dividends, the Northern Lines elected to use the earnings of the S. P. & S. System to improve the properties, thereby increasing the value of their capital stock investment to $146,233,817, an annual increase over the period, 1910-1954 of $2,360,751, or an annual return of 5.9% from their stock investments.

Deducting the $40,000,000 stock investment from the fund of $76,403,278 provided by the Northern Lines, leaves a remainder of $36,403,278 made available to the S. P. & S. System for capital expenditures. The interest amounting to $1,116,911, which the Northern Lines concede they have collected annually from the S. P. & S. System (Br. 58), amounts to an annual rate of interest of 3.7% on the amount of $36,403,278.

In computing a 1.46% rate of interest (Br. 58), appellee railroads erroneously used as the principal the sum of $76,403,278 without deduction of the $40,000,000 investment in capital stock.

Even without regard to the $21,959,415 annual freight revenue produced from S. P. & S. System traffic handled by the Northern Lines (R. 121), it is impossible to say that it has cost the Northern Lines, with their respectable return

1. Spokane, Portland and Seattle Railway Company (S. P. & S.); Oregon Electric Railway Company; and Oregon Trunk Railway.

from their stock investment and substantial interest payments, one penny to keep the S. P. & S. System in operation.

It may be, as stated by appellee railroads, that the Northern Lines invested in the S. P. & S. System to produce traffic from which the Northern Lines would receive the long haul (Br. 4). This would doubtless be the hope that has inspired many investments in railroad construction, but the requirements of the Interstate Commerce Act of reasonable through routes and joint rates and no discrimination against connections or any person or locality, apply to such a railroad as to any other.

Railroad appellees would give the impression that only the Northern Lines' joint investment in the S. P. & S. System has made possible the traffic which it originates or terminates (Br. 5). Appellant handles thousands of carloads per year of S. P. & S. System traffic, the greater part of which moves over its lines east of the Twin Cities where neither of the Northern Lines offer service; hence appellant's sole investment in its railroad also makes possible the movement of S. P. & S. System traffic to and from all points in the country.

Railroad appellees refer to the assertion before the Commission that the business east of the Twin Cities of certain of the railroad appellees would be placed in jeopardy should appellant obtain the relief herein sought. The Commission briefly summarized in its report the contentions of these appellees in its recital of the evidence (R. 121, 123), but omitted mention thereof in its general discussion, conclusions and findings. As stated in *Securities Comm'n* v. *Chenery Corp.*, 318 U. S. 80, 94:

> "The Commission's action cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order as an appropriate safeguard for the interests protected by

the Act. There must be such a responsible finding. Compare *United States* v. *Chicago, M. St. P. & P. R. Co.*, 294 U. S. 499, 510-11. There is no such finding here."

In the statement in their brief, the United States and the Interstate Commerce Commission, herein for convenience called the "Commission", assert that generally there is no interchange of traffic between the Milwaukee and the S. P. & S. at Spokane (Br. 4). The actual interchange of 513 cars per year at that point disproves this statement (R. 93).

The Commission points to the willingness of the Northern Lines to establish joint rates on traffic to or from Milwaukee local points (Br. 5). Their willingness, however: (1) embraces only joint rates to or from points served exclusively by the Milwaukee, thereby eliminating additional joint rates via the Milwaukee to any of the major cities; (2) is dependent upon the ability of one seeking such rates to convince the Northern Lines there is a need, something which 36 commercial witnesses in the present proceeding were unable to do; and, (3) gives no indication that they would enter into joint rates via junctions which would give the Milwaukee a fair chance to compete with them for the long haul (R. 120). In other words, they are not willing to change the present inequitable arrangement whereby the Milwaukee is short-hauled on 11 out of 12 cars of S. P. & S. traffic originating at or destined to local and common points on its lines as well as to points on its connections (R. 3117-3144).

II. COMMON MANAGEMENT OR CONTROL.

Neither the appellee railroads nor the Commission makes any attempt to explain why Congress, if it intended to include joint control within the meaning of "common management or control" in Section 15(4), did not specifically

so state. Congress went to particular pains in other paragraphs of Section 15, *i. e.*, (1), (3), (6), (7), (8), and (13) to say "carrier or carriers", "line or lines" or "the several carriers" when it meant to include them generally or jointly. In Section 5(2) it provided:

> "(a) It shall be lawful, with the approval and authorization of the Commission * * * for any carrier, *or two or more carriers jointly* to acquire control of another through ownership of its stock or otherwise * * *." (Emphasis supplied.)

Under the interpretation contended for by appellees of Section 15(4), the words which we have emphasized would be a redundancy. Obviously Congress thought they were necessary and the absence of similar words in Section 15(4) is most significant.

Appellees likewise make no comment on the explanation by the Senate Committee on Interstate Commerce of the short-haul protection provided by Section 15(4), quoted in our opening brief (pp. 19, 20): *i. e.*, that it was to protect a railroad *having a line of its own* between two designated termini.

Both appellees disagree with appellant that the short-haul proviso of Section 15(4) should be construed narrowly as an exception to remedial legislation authorizing the Commission to establish through routes. The problem is aptly summarized by Justice Frankfurter in *Denver & R. G. W. R. Co. v. Union P. R. Co.*, 351 U. S. at 336, who in his dissenting opinion said:

> "As is true so often in applying regulatory legislation, the general approach—that is, the starting point—may be determinative of the result. It makes a vital difference whether § 15(4) is deemed a restriction on the power of the Interstate Commerce Commission which is to be closely confined and sharply construed or whether it is deemed to express a legis-

> lative command which ought to be heeded and not slightingly enforced."

Appellees would insist that the starting point is Section 15(4) and that the limitations upon the Commission's power to establish through routes is therefore not an exception to its power under other sections of the Act. Appellant submits that the restrictions of 15(4) are clearly an exception to the Commission's powers under Section 15(3) to establish through routes and joint rates. This view is supported by the majority opinion in *Denver & R. G. W. R. Co.* v. *Union P. R. Co.*, 351 U. S. at 325:

> "Section 15(4), which is very important in this controversy, places restrictive conditions upon the Commission's power to establish through routes under § 15(3) when the establishment of a through route would require a railroad 'without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route * * *'."

The Commission states (Br. 20) that this Court has repeatedly rejected attempts by the Commission to interpret the short-haul clause restrictively, citing *United States* v. *Missouri Pacific R. Co.*, 278 U. S. 269; *Thompson* v. *United States*, 343 U. S. 549. What this Court did, however, was to reject the Commission's attempt to read into the Act an intent which Congress had not expressed. The Commission's interpretation in those cases would have expanded by construction its powers to establish through routes. Having erred too far in that direction, the Commission now timidly reads into Section 15(4) an intent to limit its powers to prescribe through routes in a situation involving joint management or control, which intent has never been expressed by Congress.

All appellees recognize the importance of the enactment of Section 1(3)(b) of the Interstate Commerce Act in 1940, in which the word "control" was given a broad interpretation as used in various sections of the Act excluding, however, Section 15(4). (Commission's Brief, p. 21; Appellee Railroads' Brief, p. 35).

The Commission concedes that Section 15(4) was excluded because Congress did not want to give short-haul protection upon the showing of some indirect or inactive type of control. This, we submit, confirms that neither of the Northern Lines are under common management or control with the S. P. & S. System. Neither can directly control the S. P. & S. System. The only way that either of the Northern Lines can exercise control is through the assent and co-operation of its competitor (see opening brief, pp. 52, 53).

The Commission in its brief acknowledges the need to consult the Commission's decisions prior to the enactment of Section 1(3)(b) dealing with the term "control" as used in Section 15(4), Congress having given its express approval to the Commission's previous interpretations (Br. p. 22). One looks in vain, however, for a citation in either of appellees' briefs of a Section 15(4) case in which the Commission or a court has held that "common management or control" includes joint control by independent railroads of another railroad or anything other than control by one railroad through majority stock ownership. Nor has this appellant, after an exhaustive search, been able to find such a case.

As stated in our opening brief (pp. 26-28), whenever the question of joint control was presented to the Commission prior to the enactment of Section 1(3)(b), the Commission rejected the contention that such control was common management or control under the meaning of Sec-

tion 15(4). *Hughes Creek Coal Co.* v. *K. & M. Ry. Co.*, 29 I. C. C. 671; *Absorption of Switching Charges*, 157 I. C. C. 129; *Manufacturers Ry. Co.* v. *Ahnapee & W. Ry. Co.*, 172 I. C. C. 554.

Appellees strive, without success, to neutralize the impact of these decisions. The Commission suggests (Br. pp. 27, 28) that ownership in the *Hughes Creek* case by two railroads in almost equal amounts of 8/9ths of the stock of another railroad and their appointment of the majority of the latter's directors were not a sufficient interest, and had the two railroads owned the additional 1/9th of the stock and exercised joint control to the extent that the Northern Lines exercised control of the S. P. & S. System, the decision would have been different. The railroad appellees argue simply that the owning railroads did not exercise their power of control over the subsidiary railroad and hence were not entitled to the protection of Section 15(4) (Br. 47).

It is clear that the two owning railroads, which together held 8/9ths of the subsidiary's stock, had joint control without the need of acquiring the remaining 1/9th interest. The argument that the power of control must be actively exercised would lead to the untenable position that the owners by giving free rein to the subsidiary one month and actively exercising their control the next month could turn on and off the short-haul limitations on the Commission's power under Section 15(4). Moreover, the officials of a subsidiary are "dependent for their positions upon the will of the two trunk line companies controlling the stock; and it is vain to say such officers do not become sensitive to the interest and policies of the real masters of the situation." The latter quotation from *United States* v. *Lake Shore & M. S. Ry. Co.*, 203 Fed. 295, refers to the joint control of railroads involved in the *Hughes Creek* case.

The Commission would avoid *Absorption of Switching Charges*, 157 I. C. C. 129, and *Manufacturers Ry. Co.* v. *Ahnapee & W. Ry. Co.*, 172 I. C. C. 554, the only other Section 15(4) cases in which the Commission has decided whether joint owners are under common management or control within the meaning of that section, by arguing that under the facts presented common management or control had not been established (Br. p. 27). In view of the Commission's findings that the subsidiary (Terminal) was controlled by its owners through the ownership of one share each of stock and under a collective management and control of a majority of them, its holding that such joint control is not common management or control within the meaning of Section 15(4) is most important. *Manufacturers Ry. Co.* v. *Ahnapee & W. Ry. Co.*, 172 I. C. C. at 560.

Appellee railroads seek to revive the argument raised by the Commission in its Motion to Affirm in this Court (p. 9), but not renewed on brief; *i. e.*, that the Terminal was perpetually enjoined by this Court from operating other than as a terminal interchange facility for all railroads desiring to use its facilities upon equal terms. *United States* v. *St. Louis Terminal*, 224 U. S. 383; 236 U. S. 194. Railroad appellees are aware that this Court also specifically ordered that the decree contain a provision that nothing therein should be taken to affect in anywise the power of the Commission over the establishing of joint through rates or routes over the lines of the Terminal (Br. 50). Despite this recognition, railroad appellees assert that this Court nevertheless had broadened the power of the Commission to establish routes via the Terminal (Br. 50).

Aside from the fact that this contention is in direct conflict with the plain language of the Court's decision, railroad appellees overlook one other pertinent fact. In neither *Absorption of Switching Charges*, 157 I. C. C. 129

or *Manufacturers Ry. Co.* v. *Ahnapee & W. Ry. Co.*, 172 I. C. C. 554, did any one seek the use of the Terminal. In both cases the protesting or complaining railroad was seeking to preserve the use of its own line as part of a through route in connection with the owning railroads.

Three Section 15(4) cases involving the S. P. & S. System and short-hauling were cited in our opening brief (pp. 29, 55), as significant because in none of them did the Commission find that the S. P. & S. System was under common management or control with the Northern Lines within the meaning of that section. In the first case, *West Coast Lumber Mfrs. Asso.* v. *S. P. & S. Ry. Co.*, 45 I. C. C. 230, the S. P. & S. System claimed the long-haul protection of Section 15(4) against the Union Pacific, stating that it had cancelled its joint rates with that carrier to obtain its "full line haul" of approximately 500 miles on eastbound traffic to Spokane. Apparently no contention was made and the Commission made no finding that the short-haul protection also extended to the route of the Northern Lines east of Spokane resulting in a combined long-haul to the Twin Cities of over 1800 miles.

The Commission has nothing to say in its brief about this case but the railroad appellees attempt to reconcile it with the present proceeding. They claim first that the Northern Lines were not parties to the earlier case. The Commission's report, however, 45 I. C. C. at 230, shows that the Trans-Continental Freight Bureau Carriers were represented in the proceeding and the Commission's file shows that a brief was filed on their behalf. Both of the Northern Lines were then members of the Trans-Continental Freight Bureau and had been for many years.

Next, the Northern Lines contend that the destination territory involved was between Denver and the Missouri

River and that to this territory the Northern Lines' long haul extended from Spokane only to Billings, Montana. The case, however, involved two separate complaints. One sought reinstatement of joint rates on lumber and forest products from certain points on the S. P. & S. via Portland thence the Union Pacific to points east of Denver, Colorado. Although the territory between Denver and the Missouri River was said to furnish complainants' principal consuming market, the joint rates sought were not restricted to that territory. The second complaint embraced all other commodities from certain S. P. & S. origins to all territory east of the Missouri River. In each case the availability of three Trans-Continental routes via the S. P. & S. to Spokane and thence the Northern Pacific, Great Northern, or appellant and their connections to points east of the Missouri River was stressed by the Commission. Railroad appellees, therefore, have failed to explain how the Northern Lines' interest in the present proceeding is any different than in the earlier case in which they made no pretense of common management or control with the S. P. & S. System.

Both the Commission (Br. 26, 27) and the railroad appellees (Br. 50) infer that in the second case, *West Coast Lumbermen's Asso. v. C. M. St. P. Ry. Co.*, 129 I. C. C. 363, in which a short-hauling issue was raised, the S. P. & S. System was found to be under common management or control with the Northern Lines. Railroad appellees admit that the question "was not squarely presented for determination" but contend that the Commission indicated it would approve extension of Section 15(4) protection to two proprietary lines in a jointly-owned subsidiary (Br. 43).

Actually the Commission merely observed that for rate-making purposes the S. P. & S. was considered a part of the Northern Lines, citing a 1910 case, *Portland Cham-*

ber of Commerce v. *O. R. R. & N. Co.*, 19 I. C. C. 265, 283. It avoided a decision whether the S. P. & S. was under common management or control of the Northern Lines within the meaning of Section 15(4) by finding that it had no authority to require the establishment of joint rates over Canadian routes sought in the complaint.

In the third case, decided in 1952, *Helix Milling Co.* v. *Great Northern Ry. Co.*, 287 I. C. C. 77, the S. P. & S. invoked the short-haul protection of 15(4) against the Northern Pacific. The Commission recognized that a short-hauling issue was present and made the necessary finding that through routes were needed to provide adequate and more economic transportation. Although this case was discussed in our opening brief (pp. 55-56), neither the Commission nor railroad appellees attempt to inform this Court how the S. P. & S. System in one through route case can be treated separately from the Northern Pacific, and in the present proceeding as a part of both Northern Lines on whose behalf it can invoke the short haul protection.

Because the decisions of the Commission in all Section 15(4) cases involving joint control, as well as those involving the S. P. & S. System, both prior and subsequent to the enactment of Section 1(3)(b), clearly indicate that joint control is not equivalent to common management or control under Section 15(4), both the Commission and the railroad appellees prefer to rely upon cases arising under other sections of the Act (Commission's Brief, pp. 20, 22-26, 31-33; Railroad Appellees' Brief, pp. 35-46).

In rate-making cases, as stated by railroad appellees (Br. 35), the Commission exercises its powers, not under Section 15(4), but under Section 15(1), which contains no mention of common management or control. The Com-

mission, therefore, has had no occasion to construe the intent of Congress in rate-making cases with respect to those words.

It is argued, however, that the Commission has denied higher joint-line rate scales for a movement over proprietary lines and their subsidiaries and has deprived short or weak lines owned by a standard carrier of arbitraries, *i.e.*, additions to the rates for the portion of a haul over a short or weak line. Appellees consider it unfair and inconsistent unless such carriers are treated as a single unit with their owning lines under Section 15(4) (Commission's Brief, p. 23; Railroad Appellees' Brief, p. 38).

Conversely, such argument would mean that railroads which are not treated as a single line with another and not denied arbitraries or joint-line rate scales could not properly claim themselves to be under common management or control under Section 15(4). We, therefore, pointed out in our opening brief (pp. 49-50), that the fact that a short line is jointly owned by two standard carriers does not prevent it from charging an arbitrary in addition to the normal rate for its portion of a haul. *Malleable Iron Range Co.* v. *Chicago M. St. P. & P. R. Co.*, 253 I. C. C. 431.

The Commission has also authorized the collection of class-rate arbitraries by other jointly owned short-line railroads including:

Sunset Railway Co., owned jointly by the Santa Fe and the Southern Pacific.

Oregon, California & Eastern Railway, owned jointly by the Great Northern and the Southern Pacific.

Class Rates, Mountain Pacific Territory, 296 I. C. C. 555, 656, 666-673.

Evidence was offered in *Malleable Iron Range Co.* v. *Chicago, M. St. P. & P. R. Co.*, *supra*, 253 I. C. C. 431, 432, of arbitraries on all classes of freight on branch lines of the S. P. & S. in the State of Washington.

It appears, therefore, that the Commission finds no difficulty in permitting short-line railroads, even when jointly or singly owned by a standard carrier, to charge differentials in any deserving case.

There is no indication in the record that any joint-line scales have ever been prescribed in the area served by the S. P. & S. System. It was pointed out, however, in our opening brief (p. 54) that under at least 14 different tariffs the Northern Lines and the S. P. & S. System apply rate scales separately to the distances over their respective lines rather than on a continuous mileage basis. This permits the collection of higher freight charges without the need of a joint-line rate scale.

Both the Commission and railroad appellees place reliance upon two cases decided by this Court in 1916 and 1918: *Louisville & Nash. R. R.* v. *United States*, 242 U. S. 60; *Chicago, M. & St. P. Ry.* v. *Minn. Civic Assn.*, 247 U. S. 490.

Both appellees quote from the opinion of Mr. Justice Holmes in the *L. & N.* case in which he concluded that two owners of terminal property in Nashville who jointly perform their own switching could not be found to discriminate against a third carrier for whom they refused to perform switching. The obligation of two railroads who separately own terminal properties and who jointly perform their own switching operations, of course, provides no analogy to the present situation in which two

railroads have created a corporation which holds itself out to the public as a common carrier and is subject to the various sections of the Interstate Commerce Act. Understandably, the lower Court herein declined to find the *L. & N.* case controlling (R. 169, 170).

The *Minneapolis* case is one step further removed, involving no provision of the Interstate Commerce Act. In this case, however, two railroads had created a separate corporation to perform for them the switching service which the Court found they would otherwise have been required to perform themselves. It therefore, was not a common carrier such as the S. P. & S. System, subject to the Interstate Commerce Act, but was a mere agency performing service for two railroads. It is not surprising that neither the Commission in its report nor the District Court placed any reliance upon this case.

Appellees' citation of cases in which the Commission had no occasion to construe the intent of Congress with respect to common management or control, arising under other sections of the Act, provides no assistance whatever in determining what meaning Congress intended in Section 15(4). It is necessary only to refer to the statutory language, the explanation thereof by the Senate Committee recommending its enactment, and the decisions of the Commission interpreting it which Congress expressly approved when it enacted Section 1(3)(b).

III. THROUGH ROUTES.

Both the railroad appellees (Br. 13-26) and the Commission (Br. 33-40) depend heavily upon the cases of *Thompson* v. *United States*, 343 U. S. 549 and *Denver & R. G. W. R. Co.* v. *Union P. R. Co.*, 351 U. S. 321.

The different factual situations in those cases and the present one is fully outlined in our opening brief (pp.

59-62). The existence of through routes over appellant's line between Spokane and the Twin Cities over which it now seeks additional joint rates is proved by: (1) existing joint rates on all commodities applicable over such line; (2) the interchange of 513 cars per year at Spokane; and (3) the finding by the Commission that shippers can presently ship over the Milwaukee's route between Spokane and the Twin Cities to and from all points on the appellant and its connections at combination rates where joint rates do not presently apply.

The Commission's finding that routes are available to and from points on the S. P. & S. via Spokane in connection with appellant and its eastern connections at combination rates establishes that an arrangement for continuous carriage exists between the S. P. & S. System and the appellant for such traffic. Such an arrangement does not necessarily exist wherever there is a physical connection. Under Section 15(8) of the Interstate Commerce Act, no railroad is required to accept traffic for interchange at such a connection unless a through route thereover already exists.

Both the railroad appellees (Br. 23) and the Commission (Br. 39, 40) are concerned because appellant disagrees with a statement (not a formal finding) in the Commission's report that there was no indication that any traffic had moved via Spokane over appellant's line at combination rates. As stated in our opening brief (p. 66) the evidence does indicate that a number of such shipments moved at combination rates. Railroad appellees themselves are unable to find a joint rate for shipments of laundry equipment, candy and confectionery, food products, starch, manufactures and miscellaneous, chemicals, soap and washing detergent, furniture, insecticides and fungicides, and empty containers, shipments of which moved over appellant's line via Spokane (see Railroad Appellees' Brief, pp. 21, 22).

The question is relatively unimportant, however, because whether the commodities moved on a joint rate or on a combination rate, it is clear that arrangements presently exist between the S. P. & S. and appellant for the interchange and continuous carriage of traffic via Spokane.

Both the Commission (Br. 43) and railroad appellees (Br. 16) try to distinguish *Virginian Railroad Co.* v. *United States*, 272 U. S. 658, as holding that through routes existed on coal to the West but could not be used because of the Virginian's discriminatory rate practices over its portion of the route. The Commission then notes that in the instant case there has been no finding that the local rate charged by the S. P. & S. is either unreasonable or discriminatory.

In the *Virginian* case, it was charged that the combination of the Virginian's local rate from the mines on its railroad to its junctions with the C. & O., and the C. & O.'s rates from the junctions to the West resulted in charges so high as to be prohibitive. 272 U. S. at 661. The Commission found that the rates from the Virginian's mines in West Virginia to interstate destinations in Central Territory (Ohio, Indiana, Michigan, and parts of Illinois) would for the future be unreasonable to the extent that they exceeded the rates on like traffic from other coal rate districts in the area. *Wyoming Coal Company* v. *Virginian Ry. Co.*, 98 I. C. C. 488, 497. There was no indication in either the Commission's report or the Court's opinion that any traffic terminated at the junction points, that the rate to the junction points was under attack, or that such rate was itself found unlawful. Likewise, in the present case, the charges resulting from the combination of local rates via Spokane are involved rather than the local rates as such.

IV. CONCLUSION.

There is no need to extend the discussion to the remaining issues, which are fully covered in our opening brief (pp. 67-109), except to note the inaccuracy of the statement on page 47, footnote 14, of the Commission's brief:

> "Although shippers participated in the Commission proceeding, none intervened in the court proceeding."

The Commission then suggests that appellant has no standing to press the Section 3(1) issue. Intervening as plaintiffs in the District Court were the National Livestock Producers Association, American National Cattlemen's Association, National Wool Growers Association, and Chicago Producers Commission Association, on behalf of their many livestock growers, live stock markets, cattlemen, and wool growers (R. 72). These parties, together with the Secretary of Agriculture, presented their own grievance to the court both by brief and oral argument. The Commission's suggestion is, therefore, without merit.

Respectfully submitted,

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